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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,557	10/20/2003	Borden M. Larson	20238.18CON	8391

7590 02/25/2005

Allen, Dyer, Doppelt, Milbrath & Gilchrist, P. A.  
Suite 1401  
225 South Orange Avenue  
P.O. Box 3791  
Orlando, FL 32802-3791

EXAMINER
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VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,557

Applicant(s)

LARSON ET AL.

Examiner

Ajay Vasudeva

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/28/2004
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listings of Non-Patent Literature (NPL) on page 2 of the IDS filed 5/28/2004 has been crossed out because Applicant has not supplied such literature. 37 CFR 1.98(a)(2) requires that Applicant provide a legible copy of each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

The discussed NPL may be submitted with new IDS for consideration by Examiner.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-6, 8-11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Vanderfeltz et al.

Vanderfeltz et al. discloses an apparatus (figure 1) having a towing vessel, and a skeletal towing frame fitted above the vessel for supporting an elevated tow rope attachment point. The towing frame has a first and second vertical supports [7], and a third vertical support [14] extending upwardly and aft. A horizontal bridging portion [5] is provided to bridge the vertical supports. An operator's station is disposed between the gunwales and positioned at least one of amidships and forward thereof (*see figure 1*). The attachment point is positioned at a level that is above a level of operator's station.

Re the limitation "[the] horizontal bridging portion located generally above and proximate the operator's station" (emphasis provided), it may be noted that the operator's seat is considered equivalent to the operator's station. Because the horizontal bridging portion is positioned at a level that is higher than the level of operator's seat, such is considered to be generally above the operator's station – even though the horizontal bridging portion itself is not positioned at least one of the amidships and forward thereof. Further, the limitation "proximate" is a relative term. In the present case, the bridging portion is considered as located proximate the operator's station relative to the bow of the boat.

Re the independent claims 1, 6 and 11, the recitation of a tow rope attachment point disposed on the towing frame can be broadly interpreted to mean any such point on the frame to which a tow rope is capable of being attached. It is noted, however, that such recitation does not necessarily require the frame to be capable of withstanding a force of towing a performer behind the boat. Therefore, many types of towers or tubular frames that extend over an operator's station – for e.g., bimini tops -- would meet the required limitation of the claims, even if they are not disclosed for use as towing fixtures.

It is recommended that some towing-specific limitations, such as "the bridging portion of the frame designed to withstand the force of towing a human performer", as well as "a tow rope attached to the bridging portion of the frame for towing the performer" be included in the claims.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanderfeltz et al in view of Sell.

Vanderfeltz et al. discloses a tow apparatus with vertical supports, as above, with all limitations of claims 1, 6 and 11. However, Vanderfeltz et al. is silent on the vertical supports being rotatable for storage.

Sell describes the vertical towing supports being rotatable (figure 2).

It would have been obvious for one skilled in the art at the time of the invention to make the vertical supports of Vanderfeltz et al. rotatable, as taught by Sell. Making the supports rotatable would enable storage of the tow apparatus without a need for its removal from the deck of the boat.

### ***Response to Arguments***

6. Applicant's arguments filed 12/03/2004 have been fully considered but they are not persuasive.

Applicant has argued that horizontal bridging portion of Vanderfeltz et al. is neither located above the operator's station, nor located proximate the operator's station.

Applicant may note that that the operator's seat is considered equivalent to the operator's station. Because the horizontal bridging portion is positioned at a level that is higher

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than the level of operator's seat, such is considered to be generally above the operator's station – even though the horizontal bridging portion is itself not positioned at least one of the amidships and forward thereof. Further, the limitation "proximate" is a relative term. In the present case, the bridging portion is considered as located proximate the operator's station relative to the bow of the boat.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: The cited art shows boats having skeletal frame disposed in proximity to the operator's station.

Specifically, previously cited JP ('274) shows a skeletal towing frame. The operator's station in the form of a seat extends over a portion that is rear of amidships to forward thereof, and therefore is considered positioned at least one of the amidships and forward thereof. A horizontal bridging portion of the frame is located above and proximate the operator's station, even though the bridging portion itself is not positioned at least one of the amidships and forward thereof.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992. The examiner can normally be reached on Monday-Friday 1:00 pm--5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva  
Examiner  
Art Unit 3617

AV  
AV

2/22/05  
ANDREW D. WRIGHT  
PRIMARY EXAMINER